

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-219634

**DATE:** October 10, 1985

**MATTER OF:** Trinity Services, Inc.

**DIGEST:**

Where, for 11 months after bid opening, protester does not attempt to obtain information on which its protest is based that was contained in the proposed award-ee's bid, even though earlier related protests were pending during that period and the proposed award was announced by the agency, protest is dismissed as untimely under GAO's Bid Protest Regulations since the protester did not diligently pursue this information.

Trinity Services, Inc. (Trinity), protests the award of a contract to American Maintenance Company (American) under invitation for bids (IFB) No. F08650-84-B-0011 for janitorial services at the Cape Canaveral Air Force Station (Air Force). Trinity alleges that American's bid should have been rejected as nonresponsive because it submitted erroneous data with its bid for use in the IFB Economic Price Adjustment (EPA) clause.

We dismiss the protest.

This award has been the subject of previous decisions of our Office in Galaxy Custodial Services, Inc.; Government Contractors Inc.; Trinity Services, Inc., B-215738, et al., June 10, 1985, 64 Comp. Gen. 152, 85-1 C.P.D. ¶ 658, aff'd., in Government Contractors Inc.--Request for Reconsideration, B-219411.2, Aug. 9, 1985, 85-2 C.P.D. ¶ 152. As discussed in those decisions, the low bid of Galaxy Custodial Services, Inc. (Galaxy), and the second low bid of Government Contractors Inc. (GCI) were rejected as nonresponsive by the Air Force because they failed to furnish any of the information required by the IFB EPA clause. We denied

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Galaxy's and GCI's protests and found that rejection of the bids was required because the IFB unequivocally advised that certain information, including a "Base Rate" and "Base Hours," was required to be submitted with a bid.

The Galaxy decision also denied the protest of Trinity, the fourth low bidder, against the proposed award to American, the third low bidder. Trinity's protest of the Air Force's proposed award to American concerned discrepancies between American's unit prices and its total extended prices for a number of the IFB line items.

Finally, in the Galaxy decision, we noted that American proposed a significantly lower "Base Rate" and less "Base Hours" than Trinity, although the difference between their bid prices was not significant. We also observed that although American submitted its bid worksheets to support correction of the discrepancies between its unit and extended prices, the basis for the Base Rate quoted in American's bid was not apparent from the worksheets. Since an inaccurate Base Rate could prejudice the government's rights under the EPA clause, we recommended that the Air Force, in determining American's responsibility, take steps to satisfy itself that American's Base Rate and Base Hours are not too low. If American's Base Rate or Base Hours are found so unarguably false as to amount to fraud, we stated that it would be appropriate to reject American's bid. American's EPA clause data was not the subject of a protest when the Galaxy decision was issued.

On June 14, 1985, Trinity protested to the contracting officer against the award to American. This protest was triggered by the statements in the Galaxy decision concerning verification of American's EPA data. In the protest, Trinity stated that although it was not privy to the amount of the Base Rate quoted in American's bid, it must have been "unrealistically low" compared to American's bid price and Trinity's "more realistic EPA figures." Trinity contended that American's Base Rate will result in eliminating any possibility of a downward adjustment under the EPA clause. Trinity argued that American's bid therefore must be rejected as nonresponsive under paragraph L.98 of the IFB, which provides in pertinent part:

" . . . Bids which provide for adjustment that may exceed the maximum adjustment stipulated, if a maximum adjustment is stipulated

in the clause, or which limit or delete the downward adjustment, if a downward adjustment is stipulated in the clause, shall be rejected as nonresponsive."

On July 17, 1985, the Air Force denied Trinity's protest after making award to American. The contracting officer concluded that based upon a thorough examination of American's bid worksheets, American's quoted Base Rate and Base Hours were arrived at correctly and are not false, and that the government's rights under the EPA clause will not be prejudiced. Trinity states that at about this same time, it found out what Base Rate and Base Hours were quoted by American in its bid.

On July 31, 1985, Trinity protested the matter to our Office. Trinity asserts that American's quoted Base Rate is less than what Trinity calculates would be the minimum Base Rate upon payment of the minimum hourly wages and fringe benefits in the IFB's Service Contract Act wage determination. Trinity contends that this effectively precludes downward price adjustments under the EPA clause.

We dismiss the protest as untimely filed under our Bid Protest Regulations. Protests must be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1985). If a protest is filed initially with the contracting agency, our Office will consider subsequent protests, provided that the initial protest to the agency is filed in accordance with the time limits prescribed in our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(3) (1985). If a protest is untimely filed with the procuring agency under our Bid Protest Regulations, we will not consider the protest, even if the agency considered the merits of the protest, because our timeliness requirements provide objective criteria which may not be waived by action taken by the agency. See BHT Thinning, B-217105, Jan. 16, 1985, 85-1 C.P.D. ¶ 44; Evans Inc.--Request for Reconsideration, B-213289.3, Feb. 27, 1984, 84-1 C.P.D. ¶ 240.

Trinity alleges that it first became aware of the potential discrepancy in American's Base Rate from our recommendation in the Galaxy decision. Trinity further states that it "was not privy" to the actual Base Rate quoted by American until the Air Force denied its protest.

However, the American Base Rate at issue was included in its bid, which was opened on July 24, 1984. Trinity previously stated that it had a representative at bid opening.

Although Trinity's initial protest to our Office was filed on July 31, 1984, this protest did not address or mention any alleged discrepancies in American's quoted Base Rate or Base Hours. The EPA clause information was the subject of GCI's protest, however, and Trinity submitted comments as an interested party concerning that issue.

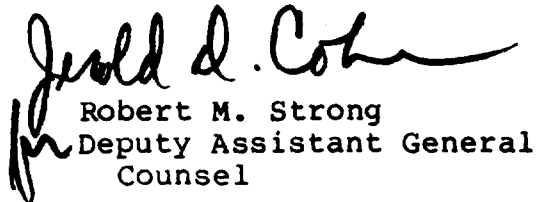
We have held that protesters have a duty to diligently pursue their protests by seeking within a reasonable time information which reveals the basis for protest. Waukesha Engine Division of Dresser Industries, Inc., B-215265, June 24, 1985, 85-1 C.P.D. ¶ 711; National Systems Management Corporation, B-198811, Oct. 10, 1980, 80-2 C.P.D. ¶ 268. The potential discrepancy in American's quoted Base Rate and Base Hours is apparent from an examination of American's and Trinity's bids. American's bid worksheets (still not seen by Trinity), referred to in the Galaxy decision, would add nothing substantial to Trinity's protest basis. Trinity apparently did not avail itself of the opportunity at bid opening to note American's Base Rate and made no effort to ascertain this information in the 11 months following bid opening, even though the EPA clause information was at issue in the GCI and Galaxy protests and the Air Force proposed award to American. Under the circumstances, we do not find Trinity diligently pursued obtaining the information on which to base this protest. Therefore, we dismiss Trinity's protest that American's bid should be rejected as nonresponsive.

Trinity also is apparently protesting that the Air Force did not reasonably adhere to the recommendation made in the Galaxy decision that it verify American's Base Rate and Base Hours. The contracting officer denies this allegation and asserts that American's Base Rate and Base Hours were correctly quoted and are not prejudicial to the government's interests under the EPA clause. Moreover, Trinity has not shown that American's Base Rate or Base Hours are so unarguably false as to amount to fraud.

Further, as stated in the Galaxy decision, the contracting officer's verification of this information was to be performed in determining American's responsibility. This Office will not review an affirmative determination of responsibility unless the protester shows possible fraud or bad faith on the part of the contracting officials or

alleges that the solicitation contains definitive responsibility criteria which have been misapplied. 4 C.F.R. § 21.3(f)(5) (1985); Pacific Fabrication, B-219837, Aug. 30, 1985, 85-2 C.P.D. ¶ \_\_\_\_\_. Neither exception has been alleged here.

The protest is dismissed.

  
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